

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 29.85(a)(2)(A)
Title 14, California Code of Regulations
Re: Crabs – Open season

- I. Date of Initial Statement of Reasons: June 18, 2008
- II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: June 27, 2008
Location: Upland
 - (b) Discussion Hearing: Date: August 8, 2008
Location: Carpinteria
 - (c) Adoption Hearing: Date: September 5, 2008
Location: Truckee
- III. Description of Regulatory Action:
 - (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Current regulations of subsection 29.85 (a)(2)(A), Title 14, CCR, specify that Dungeness crab may be taken recreationally from the last Saturday in November through July 30 in Del Norte, Humboldt and Mendocino counties. Depending on the calendar year, northern California recreational Dungeness crab fishermen have a maximum of seven days and a minimum of one day advance fishing opportunity before the commercial season begins. However, since commercial crab traps may be baited and set in advance of the opening day, this year (2008) commercial fishermen will be able to set gear before the sport season opens.

The commercial crab season in districts six, seven, eight and nine (Del Norte, Humboldt and Mendocino counties) opens on December 1 (unless it is delayed by the Director pursuant to FGC Section 8276.2) and closes on July 15, by authority of FGC Section 8276. In addition, FGC Section 8283 allows the Director to specify

a date and time when commercial crab traps may be baited and set in advance of the opening day. This has traditionally been a 64 hour pre-soak period.

The presumed intent of the sport fishery opening date in advance of the commercial season opening date was to give the sport fishermen a brief period of time to fish for Dungeness crab without competition from commercial fishermen and their gear. The result, though, is that in some seasons, such as 2008/09, the sport crabbing season will not begin until after the commercial fishermen have had an advance opportunity to set their gear in the prime crab areas. Currently, with the traditional 64 hour commercial pre-soak period, sport fishermen in northern counties can encounter commercial gear on about 40 percent of their opening days.

The Department received several dozen faxes, letters and phone calls since last November from northern California sport fishermen, requesting more Dungeness crab fishing time for the sport fishery prior to the commercial season. Sport fishermen claim that once the commercial fishery begins, they can't catch any "decent" sized crab and they can't find nearshore areas to set their crab traps. The issue of an earlier sport fishery opening date was addressed by the Commission in 2006 in response to testimony at a Commission meeting from a sport fisherman, Mr. John Duffy, who requested a uniform statewide November 1st opening date for Dungeness crab. Commission records indicate that the uniform November 1st opening date request was rejected by the Commission. However, regulatory language regarding the season opener was changed with the 2007/08 season for both regions, in order to make the language less confusing (amendment of subsections (a)(2)(A)-(B) operative 2-28-2007). In central California, it was changed from 'the Saturday before the second Tuesday in November' to the 'first Saturday in November'; while in northern California the language was changed from 'the Saturday before December 1st' to 'the last Saturday in November'.

Commercial Dungeness crab landing records date back to 1915, with the fishery usually ranking within the top five in both pounds landed and value despite periodic fluctuations in catch. The recent statewide 10-year annual average catch is about 12.6 million pounds, fluctuating from a low of 3.6 million pounds to a high of 23.9 million pounds.

Current sport regulations (Title 14, Section 29.85) limit anglers to 10 Dungeness crabs per person per day, with no trap limit, except when fishing from a Commercial Passenger Fishing Vessels

(CPFV) where the limit is six crabs per person per day, with a 60 trap limit for the boat. There is not a sampling program for the Dungeness crab sport fishery. However, some data from CPFV logbooks are available. Those data show that since 2000/01, statewide CPFV Dungeness crab catches range from approximately 40,000 pounds to 80,000 pounds (20,000 to 40,000 crabs). Most Dungeness crab CPFVs operate in the San Francisco Bay area and from Bodega Bay, with little CPFV effort on the northcoast. Most of the sport crab fishery effort on the northcoast is from small private boats. Department biologists have estimated the statewide sport catch to average less than one percent of the commercial catch historically, though this percentage may be increasing with the rise in popularity of Dungeness crab CPFV trips in the San Francisco Bay area in the last decade. Since 1990, over 70 percent of the statewide commercial catch has occurred by the end of January. Sport fishery catch per unit effort (CPUE) from the 1960s shows a marked decline after the commercial season opens. Creel surveys of fishermen in Crescent City and Eureka conducted between 1983 and 1986 showed that same trend. No new data are available from more recent times but there is no reason to believe that the CPUE seasonal pattern has changed

Soft-shelled crab associated with the post-molt period in summer and fall, are sometimes encountered by sport and commercial fishermen in significant numbers, depending on the particular season. An earlier sport season north of Sonoma County would mean that in some years more soft crab will be encountered by sport fishermen, however, given the relatively small harvest of Dungeness crab by sport fishers there, this is not expected to be a resource problem. The state of Oregon allows fishing for Dungeness crab year-round in its bays and estuaries, beaches, tidepools, piers and jetties, while both the commercial and sport fisheries start in December on the open coast. California has relatively fewer bays and estuaries and the San Francisco Bay is already closed to sport fishing for Dungeness crab.

Largely because of the relatively small recreational catch and effort compared to the commercial fishery, Department biologists do not believe that allocating more days to the sport fishery north of Sonoma County prior to the commercial season, under the proposed regulations, will harm the resource or cause significant impacts to the commercial fishery.

The proposed regulations would allow the Commission to change the sport fishery opening date in the northcoast to either the first (Option 1) or third (Option 2) Saturday in November.

Option (1) simplifies statewide regulations by establishing a uniform opening date for the recreational Dungeness crab fishery throughout the entire state, while Option (2) provides a similar number of days for the recreational fishery prior to the onset of commercial fishing in both the north coast and central coast management regions. Option (2) also reduces the likelihood of encountering soft crab compared to Option (1).

If adopted for the 2008/09 season, under Option (1) north coast fishermen would have an additional 28 days of fishing prior to the commercial opening, and under Option (2) north coast fishermen would have an additional 14 days of fishing prior to the commercial opening (not including the commercial pre-soak allowance). In any particular season, the fewest pre-commercial season fishing days possible under Option (1) would be 23 days, and nine days under Option (2). An increase in crab fishing opportunity could help to offset lost opportunity in other fisheries, such as salmon and groundfish.

Some District 10 (central coast) commercial fishermen have complained about the earlier sport season opening as affording an unfair advantage to the individual sport fishermen and CPFVs, and the Department expects some opposition from the commercial industry to any proposal to allocate more sport fishing days prior to the commercial season opening dates.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 202, 205, 215 and 220 Fish and Game Code.

Reference: Section 200, 202, 205, 206, 215 and 220 Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change: None

- (d) Identification of Reports or Documents Supporting Regulation Change:

2001 CDFG Environmental Document of Ocean Sportfishing Regulations concerning Dungeness Crab

1991 CDFG Environmental Document of Ocean Sportfishing
Regulations concerning Dungeness Crab

ODFW regulations at ODFW website

- (e) Public Discussions of Proposed Regulations Prior to Notice
publication: None

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

- 1. (2) Open season:
 - (A) Del Norte, Humboldt and Mendocino counties: ~~From the last Saturday in November through July 30.~~ [From the (second OR fourth) Saturday in November through July 30.]
OR [From (November 1 - 30) through July 30].
 - (B) All other counties: ~~From the first Saturday in November through June 30.~~ [From the (second OR third OR fourth OR last) Saturday in November through June 30.] OR [From (November 1 - 30) through June 30].

This alternative encompasses all possible opening dates during the month of November, with the exception of the proposed regulation changes and addresses changes in both the north and central areas. It would also allow for opening dates which may differ between northern and central counties. This alternative allows the Commission the greatest flexibility in setting the opening dates but addresses a much greater geographic area and may create other issues with opening dates not being on a weekend.

These alternative dates were not included in the proposed action because, with the exception of the first and third Saturdays, there was no clear reason to single out any particular day in November as preferable over any other particular day. Consequently, the second and fourth Saturdays along with all of the specific calendar dates in November are identified as "Reasonable Alternatives to Regulatory Action".

- (b) No Change Alternative:

29.85(a)(2) Open season: (A) Del Norte, Humboldt and Mendocino counties: From the last Saturday in November through July 30. (B) All other counties: From the first Saturday in November through June 30.

There is no requirement that sport fishermen be given any "head-

start” fishing opportunity when the resources are shared between commercial and sport fisheries. However, societal desires often justify differences in management approaches in order to “balance” the “competition”. The Commission has been responsive to this societal desire and the current regulations reflect this “balance” although not adequately according to the individuals who contacted the Department.

- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than either of the proposed regulatory options.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses In California: None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: There is no anticipated significant increase or

decrease in costs to either Department administrative, biological or enforcement divisions, associated with the proposed project. An earlier opening season in Del Norte, Humboldt and Mendocino counties may increase fishing effort by some unknown, but limited amount, while shifting effort from later to earlier dates.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Informative Digest/Policy Statement Overview

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the language was changed from ‘the Saturday before December 1st’ to ‘the last Saturday in November’.

The proposed regulations would allow the Commission to change the sport fishery opening date in the northcoast to either the first or third Saturday in November.

Proposed Dungeness crab sport fishery regulation changes – T14, subsection 29.85(a)(2)(A)

29.85 Crabs. (a) Dungeness crab (*Cancer magister*): (2) Open Season: (A) Del Norte, Humboldt and Mendocino counties: [(Option 1) From the first last Saturday in November through July 30] OR [(Option 2) From the third last Saturday in November through July 30].

If adopted for the 2008/09 season, under Option (1) north coast fishermen would have an additional 28 days of fishing prior to the commercial opening, and under Option (2) north coast fishermen would have an additional 14 days of fishing prior to the commercial opening (not including the commercial pre-soak allowance). In any particular season, the fewest pre-commercial season fishing days possible under Option (1) would be 23 days, and nine days under Option (2). An increase in crab fishing opportunity could help to offset lost opportunity in other fisheries, such as salmon and groundfish.

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